

Remarks

Claims 1-6 and 9-33 are pending in the application, with claims 1 and 14 being independent.

Claim 14 is objected to for an inconsistency.

Claim 1 is rejected under 35 U.S.C. 112, ¶2, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 3, 5, 14-15, 18,23, 26 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott et al. US 20040022237, hereinafter "Elliott" in view of Szabo US20020003779 A1, hereinafter "Szabo."

Claims 4, 6-10, 19-22, 24-25 and 27-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elliot in view of Szabo, further in view of H. Schulrinne et al. IETF RFC 3550 "RTP: A Transport Protocol for Real-Time Applications," July 2003, hereinafter "RFC 3550."

Claims 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott in view of Szabo and Watt, further in view of RFC 3550.

Claims 2 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott in view Szabo, further in view of Watt US Patent number 5781532, hereinafter Watt.

Claims 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott in view of RFC 3550 and Szabo, further in view of Hooper et al. U.S. 20040252686 A1, hereinafter Hooper.

Each of the various rejections and objections are overcome by amendments that are made to the specification, drawing, and/or claims, as well as, or in the alternative, by various arguments that are presented.

Entry of this Amendment is proper under 37 CFR 1.116 since the amendment: (a) places the application in condition for allowance for the reasons discussed herein; (b) does not raise any new issue requiring further search and/or consideration since the amendments amplify issues previously discussed throughout prosecution; (c) satisfies a requirement of form asserted in the previous Office Action; (d) does not present any additional claims without canceling a corresponding number of finally rejected claims; or

(e) places the application in better form for appeal, should an appeal be necessary. The amendment is necessary and was not earlier presented because it is made in response to arguments raised in the final rejection. Entry of the amendment is respectfully requested.

Any amendments to any claim for reasons other than as expressly recited herein as being for the purpose of distinguishing such claim from known prior art are not being made with an intent to change in any way the literal scope of such claims or the range of equivalents for such claims. They are being made simply to present language that is better in conformance with the form requirements of Title 35 of the United States Code or is simply clearer and easier to understand than the originally presented language. Any amendments to any claim expressly made in order to distinguish such claim from known prior art are being made only with an intent to change the literal scope of such claim in the most minimal way, i.e., to just avoid the prior art in a way that leaves the claim novel and not obvious in view of the cited prior art, and no equivalent of any subject matter remaining in the claim is intended to be surrendered.

Also, since a dependent claim inherently includes the recitations of the claim or chain of claims from which it depends, it is submitted that the scope and content of any dependent claims that have been herein rewritten in independent form is exactly the same as the scope and content of those claims prior to having been rewritten in independent form. That is, although by convention such rewritten claims are labeled herein as having been "amended," it is submitted that only the format, and not the content, of these claims has been changed. This is true whether a dependent claim has been rewritten to expressly include the limitations of those claims on which it formerly depended or whether an independent claim has been rewritten to include the limitations of claims that previously depended from it. Thus, by such rewriting no equivalent of any subject matter of the original dependent claim is intended to be surrendered. If the Examiner is of a different view, he is respectfully requested to so indicate.

Claim Objection

Claim 14 is objected to for an inconsistency.

Applicants have herein amended claim 14 to correct the inconsistency.

Therefore, the objection should be withdrawn.

Rejection Under 35 U.S.C. 112, ¶2

Claim 1 is rejected under 35 U.S.C. 112, ¶2, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The rejection is traversed.

Applicants' claim 1, as amended in the previous response, does not recite "the first gateway" in the manner asserted by the Examiner. Rather, Applicants' claim 1 states "a first gateway" such that the rejection is moot.

Therefore, the rejection should be withdrawn.

Rejection Under 35 U.S.C. 112, ¶1

Claims 31 and 32 are rejected under 35 U.S.C. 112, ¶1, as failing to comply with the written description requirement. The rejection is traversed.

With respect to claim 31, Applicants note that support for Applicants' claim 31 may be found at least on Pg. 9, Lines 13 – 16 of Applicants' application, which discusses an admission control algorithm that is used to determine if there is an uncongested path from the first gateway to the second gateway (i.e., looking at more than one, and possibly all, of the paths from the first gateway to the second gateway). Thus, claim 31 satisfies the requirements of 35 U.S.C. 112, ¶1.

With respect to claim 32, Applicants note that this claim is only rejected due to its dependency from claim 31. Thus, since the rejection of claim 31 has been overcome, Applicants submit that the rejection of claim 32 also has been overcome.

Therefore, the rejection should be withdrawn.

Rejection Under 35 U.S.C. 103(a)

Claims 1, 3, 5, 14-15, 18, 23, 26 and 33

Claims 1, 3, 5, 14-15, 18, 23, 26 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott in view of Szabo. The rejection is traversed.

Elliott and Szabo, alone or in combination, fail to teach or suggest all of the elements of Applicants' claim 1.

Namely, Elliott and Szabo, alone or in combination, fail to teach or suggest at least the limitation of “determining, using at least a portion of said information, a plurality of congestion status parameters indicative of respective congestion statuses of the network paths, each of said network paths being associated with respective first gateway egress interfaces and a second gateway system IP address.”

Elliott discloses a system that permits packet switching of voice calls and data calls through a data network.

Elliott, however, is devoid of any teaching or suggestion of determining a plurality of congestion status parameters associated with a respective plurality of network paths where each network path is associated with a respective first gateway egress interface and a second gateway system IP address.

Rather, Elliott is primarily directed toward management of gateway sites using soft switch sites, call setup and teardown, provisioning and network event management, and related functions.

Elliott is devoid of any teaching or suggestion of network paths as recited in Applicants' claim 1. Rather, Elliott merely includes general statements regarding normal call paths and backup call paths within the context of describing off-network routing. Elliott is devoid of any teaching or suggestion of a network path that is associated with respective first gateway egress interfaces and a second gateway system IP address, much less a plurality of such network paths where a respective plurality of congestion status parameters are determined for such network paths.

Elliott also is devoid of any teaching or suggestion of determining a plurality of congestion status parameters associated with a respective plurality of network paths. Rather, the portions of Elliott cited by the Examiner merely mention multiple conditions which could trigger an outage recovery scenario in which a call is switched from a normal call path to a backup call path. In other words, at most, Elliott merely discloses identification of one or more conditions which may impact a normal call path such that a backup call path is used. Elliott is devoid of any teaching or suggestion that the referenced conditions of Elliott are associated with respective network paths (rather, as noted above, Elliott only mentions that when a normal call path is impacted by such a condition, a backup call path is used). Thus, Elliott is devoid of any teaching or

suggestion of determining a plurality of congestion status parameters associated with a respective plurality of network paths, much less a plurality of congestion status parameters associated with a respective plurality of network paths where each network path is associated with a respective first gateway egress interface and a second gateway system IP address as recited in Applicants' claim 1.

In the Final Office Action, the Examiner, citing FIG. 21B of Elliott, asserts that Elliott discloses the limitation of "determining, using at least a portion of said information, a plurality of congestion status parameters indicative of respective congestion statuses of the network paths." Applicants disagree.

In response, Applicants' Representative submits that Elliott fails to teach or suggest this limitation. The cited portion of Elliott is devoid of any teaching or suggestion of network paths as recited in Applicants' claim 1, much less determining a plurality of congestion statuses associated with a respective plurality of such network paths. Rather, as discussed above, the cited portion of Elliott merely discusses an outage recovery scenario in which a call associated with a normal call path is routed via an off-network backup call path in the event of a fiber cut, a period of unacceptable latency, or a period of unacceptable packet loss failure. Applicants submit that the normal and backup call paths of Elliott are not network paths as recited in Applicants' claim 1. Applicants further submit that Elliott fails to teach or suggest determining a plurality of congestion status parameters associated with the normal and backup call paths, respectively; rather, the cited portion of Elliott merely lists some types of conditions associated with a normal call path which may trigger routing via a backup call path. Thus, again, Elliott is devoid of any teaching or suggestion of determining a plurality of congestion status parameters associated with a respective plurality of network paths where each network path is associated with a respective first gateway egress interface and a second gateway system IP address as recited in Applicants' claim 1.

Thus, Elliott fails to teach or suggest at least the limitation of "determining, using at least a portion of said information, a plurality of congestion status parameters indicative of respective congestion statuses of the network paths, each of said network paths being associated with respective first gateway egress interfaces and a second gateway system IP address."

Furthermore, Szabo also fails to teach or suggest this limitation of Applicants' claim 1.

Szabo is devoid of any teaching or suggestion of determining a plurality of congestion status parameters associated with a respective plurality of network paths where each network path is associated with a respective first gateway egress interface and a second gateway system IP address.

Rather, Szabo merely discloses monitoring the quality of ongoing calls for use in determining whether to accept or reject an incoming call which, at most, discloses determination of a current state of the underlying network as a whole, not congestion status parameters of respective network paths, much less congestion status parameters of respective network paths where each network path is associated with a respective first gateway egress interface and a second gateway system IP address as recited in Applicants' claim 1.

Applicants submit that Szabo merely includes general statements indicating that the IP telephony gateways have access to monitoring mechanisms for monitoring the quality of ongoing calls, for use in determining whether to accept or reject an incoming call. For example, Szabo states that "...the IP telephony gateway 109 collects statistics from a number of ongoing calls for determining whether to accept or reject an incoming call, based on the collected statistics." (See Szabo, Para. [0026]).

Szabo is devoid of any teaching or suggestion of network paths as recited in Applicants' claim 1. Rather, Szabo merely discusses monitoring of ongoing calls transported via the network of Szabo, without any teachings related to any specific network paths of the network of Szabo, much less network paths as recited in Applicants' claim 1.

Furthermore, Szabo is devoid of any teaching or suggestion of determining a plurality of congestion status parameters indicative of respective congestion statuses of a plurality of network paths. Rather, in Szabo, monitoring of the quality of ongoing calls provides, at most, an indication of the current state of the underlying network as a whole, not congestion status parameters of respective network paths.

Thus, Szabo fails to teach or suggest at least the limitation of "determining, using at least a portion of said information, a plurality of congestion status parameters

indicative of respective congestion statuses of the network paths, each of said network paths being associated with respective first gateway egress interfaces and a second gateway system IP address.”

Therefore, since Elliott, and Szabo each fail to teach or suggest the limitation of “determining, using at least a portion of said information, a plurality of congestion status parameters indicative of respective congestion statuses of the network paths, each of said network paths being associated with respective first gateway egress interfaces and a second gateway system IP address,” a combination of Elliott and Szabo (assuming *arguendo* that such a combination is even possible) must fail to teach or suggest the limitation of “determining, using at least a portion of said information, a plurality of congestion status parameters indicative of respective congestion statuses of the network paths, each of said network paths being associated with respective first gateway egress interfaces and a second gateway system IP address,” as claimed in Applicants’ claim 1.

As such, at least for these reasons, Elliott, and Szabo, alone or in combination, fail to teach or suggest all of the elements of Applicants’ claim 1.

Thus, Applicants’ claim 1 is allowable over the combination of Elliott and Szabo. Similarly, Applicants’ claim 14 recites limitations similar to the limitations of Applicants’ claim 1 and, thus, at least for the same reasons provided with respect to claim 1, claim 14 also is allowable over the combination of Elliott and Szabo. Furthermore, since all of the dependent claims that depend from the independent claim include all the limitations of the respective independent claim from which they ultimately depend, each such dependent claim is also allowable over the combination of Elliott and Szabo.

Therefore, the rejection should be withdrawn.

Claims 2, 4, 6-13, 16-17, 19-22, 24-25 and 27-32

Claims 4, 6-10, 19-22, 24-25 and 27-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elliot in view of Szabo, further in view of RFC 3550. Claims 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott in view of Szabo and Watt, further in view of RFC 3550. Claims 2 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott in view Szabo, further in view of Watt.

Claims 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott in view of RFC 3550 and Szabo, further in view of Hooper. The rejections are traversed.

Each ground of rejection applies only to dependent claims, and each is predicated on the validity of the rejection under 35 U.S.C. 103 given Elliott in view of Szabo. Since such rejection has been overcome, as described hereinabove, and there is no argument put forth by the Office Action that the additional references supply that which is missing from Elliott and Szabo to render the independent claims obvious, these grounds of rejection cannot be maintained.

Therefore, the rejection should be withdrawn.

Conclusion

It is respectfully submitted that the Office Action's rejections have been overcome and that this application is now in condition for allowance. Reconsideration and allowance are, therefore, respectfully solicited.

If, however, the Examiner still believes that there are unresolved issues, the Examiner is invited to call Eamon Wall at (732) 542-2280 so that arrangements may be made to discuss and resolve any such issues.

Respectfully submitted,

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Eamon J. Wall
Registration No. 39,414
Attorney for Applicants

WALL & TONG, LLP
25 James Way
Eatontown, New Jersey 07724
Telephone: 732-542-2280
Facsimile: 732-542-2283